

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JILL KATZ and MICHAEL KATZ, as  
Administrators of the Estate of SARAH KATZ,  
Deceased,

*Plaintiffs,*

v.

PANERA BREAD COMPANY and  
PANERA, LLC,

*Defendants.*

CIVIL ACTION NO. 2:23-cv-04135-TJS

**DEFENDANTS PANERA BREAD COMPANY AND PANERA, LLC'S ANSWER  
TO PLAINTIFFS' FIRST AMENDED COMPLAINT WITH AFFIRMATIVE DEFENSES**

Defendants Panera Bread Company and Panera, LLC (collectively, "Panera"), by and through undersigned counsel, hereby Answer Plaintiffs' First Amended Complaint and assert Affirmative Defenses as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, and therefore denies them.
2. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2, and therefore denies them.
3. The allegations contained in paragraph 3 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 3.

4. Panera admits that there is a Panera Bread bakery café located at 200 S. 40<sup>th</sup> Street, Philadelphia, PA 19104, which offers food and beverages. Panera denies all other allegations contained in paragraph 4.

5. Panera admits that the Panera Bread bakery café located at 200 S. 40<sup>th</sup> Street, Philadelphia, PA 19104, conducted business activity within Philadelphia County in or about September 2022. The remaining allegations contained in paragraph 5 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the remaining allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 5.

6. Panera admits that Defendant Panera, LLC is a Delaware limited liability company in good standing in the State of Missouri, with its principal place of business located at 1400 South Highway Drive, Suite 100, Fenton, Missouri 63026.

7. Admit.

8. The allegations contained in paragraph 8 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 8.

9. The allegations contained in paragraph 9 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 9.

#### **OPERATIVE FACTS**

10. Panera hereby reasserts and re-alleges its responses to paragraphs 1-9 above.

11. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11, and therefore denies them.

12. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12, and therefore denies them.

13. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13, and therefore denies them.

14. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14, and therefore denies them.

15. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15, and therefore denies them.

16. Admit.

17. Deny.

18. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18, and therefore denies them.

19. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19, and therefore denies them.

20. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20, and therefore denies them.

21. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, and therefore denies them.

22. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, and therefore denies them.

23. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23, and therefore denies them.

24. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24, and therefore denies them.

25. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25, and therefore denies them.

26. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26, and therefore denies them.

27. Panera admits that the word “charged” is used in the name of its Charged Lemonade product. Panera denies all other allegations contained in paragraph 27.

28. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28, and therefore denies them.

29. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29, and therefore denies them.

30. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30, and therefore denies them.

31. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31, and therefore denies them.

32. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32, and therefore denies them.

33. Panera admits that Panera Bread bakery cafés used the term “Clean” in some of the advertising. Panera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33, and therefore denies them.

34. With regard to the location of the Charged Lemonade products on date of the incident, Panera is without knowledge or information sufficient to form a belief as to the truth of

the allegations in paragraph 34, and therefore denies them. Panera denies all other remaining allegations set forth in paragraph 34.

35. Deny.

36. Deny.

37. Panera admits that Charged Lemonade products were, in part, advertised as “Plant-based and Clean with as much caffeine as our Dark Roast Coffee.” Panera admits that Charged Lemonade products contain guarana and some contain sugar. Panera denies all other allegations contained in paragraph 37.

38. Panera admits that Charged Lemonade products were, in part, advertised as being “Plant-based and Clean with as much caffeine as our Dark Roast Coffee.” Panera denies all other allegations contained in paragraph 38.

39. Panera is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 39, and therefore denies them.

40. Deny.

41. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41, and therefore denies them.

#### **Defective Design**

42. Panera admits that it markets, promotes, distributes and sells Charged Lemonade products. Panera denies all other allegations contained in paragraph 42.

43. Panera admits that the Panera Bread bakery café located at 200 S. 40th Street, Philadelphia, PA 19104, sold Charged Lemonade products in September 2022. Panera denies the remaining allegations set forth in paragraph 43.

44. Panera admits that the Mango Yuzu Citrus Charged Lemonade product sold in September 2022 contained the following ingredients: water, apple juice concentrate, sugar, citric acid, caffeine, coffee extract, guarana extract, acerola powder, ascorbic acid, natural flavor, beta carotene, and agave lemonade base (water, sugar, lemon juice, lemon juice concentrate, agave and natural flavors). Panera denies all other allegations contained in paragraph 44.

45. Deny.

46. Panera admits that a 20 oz. Mango Yuzu Citrus Charged Lemonade without ice contains approximately 260 mg of caffeine and a 30 oz. Mango Yuzu Citrus Charged Lemonade without ice contains approximately 390 mg of caffeine. Panera denies all other allegations contained in paragraph 46.

47. Panera is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47, and therefore denies them.

48. Panera admits that a 12 oz. Panera Dark Roast coffee contains approximately 161 mg of caffeine, a 16 oz. Panera Dark Roast coffee contains approximately 214 mg of caffeine, and a 20 oz. Panera Dark Roast coffee contains approximately 268 mg of caffeine. Panera denies all other allegations contained in paragraph 48.

49. Panera admits that a 20 oz. Mango Yuzu Citrus Charged Lemonade with ice contains approximately 50 g of sugar and a 30 oz. Mango Yuzu Citrus Charged Lemonade with ice contains approximately 74 g of sugar. Panera denies all other allegations contained in paragraph 49.

50. Deny.

51. Deny.

52. Deny.

53. Deny.

54. Deny.

**Defective Manufacturing**

55. Deny.

56. Deny.

57. Deny.

58. Deny.

**Defective Warnings**

59. Deny.

60. Deny.

61. Panera admits that Charged Lemonade products were, in part, advertised as being “Plant-based and Clean with as much caffeine as our Dark Roast Coffee.” Panera denies all other allegations contained in paragraph 61.

62. Deny.

63. Panera admits that when dispensed Panera Dark Roast coffee does not contain sugar. Panera denies all other allegations contained in paragraph 63.

64. Deny.

65. Deny.

66. Panera admits that Charged Lemonade products contain guarana, which is a source of caffeine. Panera denies all other allegations contained in paragraph 66.

67. Panera admits that Charged Lemonade products are naturally flavored beverages, which were offered in September 2022 at the Panera Bread bakery café located at 200 S. 40th

Street, Philadelphia, PA 19104. Panera denies the remaining allegations set forth in paragraph 67.

68. Deny.

69. Deny.

70. Deny.

71. Deny.

72. Deny.

73. Deny.

74. Deny.

75. Panera admits that the Charged Lemonade products are included in the Unlimited Sip Club. Panera denies all other allegations contained in paragraph 75.

76. Deny.

77. Deny.

78. Deny.

#### **COUNT I – STRICT PRODUCTS LIABILITY**

79. Panera hereby reasserts and re-alleges its responses to paragraphs 1-78 above.

80. The allegations contained in paragraph 80 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 80.

81. The allegations contained in paragraph 81 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 81.



82. The allegations contained in paragraph 82 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 82.

83. The allegations contained in paragraph 83 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 83.

84. The allegations contained in paragraph 84 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 84.

85. The allegations contained in paragraph 85 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 85.

86. The allegations contained in paragraph 86 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 86.

87. The allegations contained in paragraph 87 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 87.

88. The allegations contained in paragraph 88 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 88.

89. The allegations contained in paragraph 89 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 89.

90. The allegations contained in paragraph 90 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 90.

91. The allegations contained in paragraph 91 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 91.

92. The allegations contained in paragraph 92 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 92.

93. The allegations contained in paragraph 93 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 93.

94. The allegations contained in paragraph 94 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 94.

95. The allegations contained in paragraph 95 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 95.

96. The allegations contained in paragraph 96 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 96.

97. The allegations contained in paragraph 97 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 97.

98. The allegations contained in paragraph 98 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 98.

Panera specifically denies Plaintiffs are entitled to any relief requested in the WHEREFORE clause.

#### **COUNT II – NEGLIGENCE**

99. Panera hereby reasserts and re-alleges its responses to paragraphs 1-98 above.

100. The allegations contained in paragraph 100 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 100.

101. The allegations contained in paragraph 101 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 101.

102. The allegations contained in paragraph 102 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 102.

103. The allegations contained in paragraph 103 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 103.

104. The allegations contained in paragraph 104 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 104.

105. The allegations contained in paragraph 105 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 105.

106. The allegations contained in paragraph 106 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 106.

107. The allegations contained in paragraph 107 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 107.

108. The allegations contained in paragraph 108 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 108.

109. The allegations contained in paragraph 109 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 109.

110. The allegations contained in paragraph 110 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 110.

Panera specifically denies Plaintiffs are entitled to any relief requested in the WHEREFORE clause.

### **COUNT III – MISREPRESENTATION**

111. Panera hereby reasserts and re-alleges its responses to paragraphs 1-110 above.

112. The allegations contained in paragraph 112 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 112.

113. The allegations contained in paragraph 113 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 113.

114. The allegations contained in paragraph 114 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 114.

115. The allegations contained in paragraph 115 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 115.

116. The allegations contained in paragraph 116 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 116.

117. The allegations contained in paragraph 117 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 117.

118. The allegations contained in paragraph 118 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 118.

119. The allegations contained in paragraph 119 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 119.

120. The allegations contained in paragraph 120 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 120.

121. The allegations contained in paragraph 121 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 121.

Panera specifically denies Plaintiffs are entitled to any relief requested in the WHEREFORE clause.

**COUNT IV – BREACH OF IMPLIED WARRANTY OF  
MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**

122. Panera hereby reasserts and re-alleges its responses to paragraphs 1-121 above.

123. The allegations contained in paragraph 123 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 123.

124. The allegations contained in paragraph 124 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 124.

125. The allegations contained in paragraph 125 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 125.

126. The allegations contained in paragraph 126 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 126.

127. The allegations contained in paragraph 127 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 127.

128. The allegations contained in paragraph 128 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 128.

129. The allegations contained in paragraph 129 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 129.

130. The allegations contained in paragraph 130 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 130.

131. The allegations contained in paragraph 131 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 131.

132. The allegations contained in paragraph 132 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 132.

133. The allegations contained in paragraph 133 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 133.

134. The allegations contained in paragraph 134 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 134.

135. The allegations contained in paragraph 135 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 135.

136. The allegations contained in paragraph 136 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 136.

137. The allegations contained in paragraph 137 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 137.



138. The allegations contained in paragraph 138 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 138.

139. The allegations contained in paragraph 139 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 139.

Panera specifically denies Plaintiffs are entitled to any relief requested in the WHEREFORE clause.

#### **COUNT V –WRONGFUL DEATH**

140. Panera hereby reasserts and re-alleges its responses to paragraphs 1-139 above.

141. The allegations contained in paragraph 141 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 141.

142. The allegations contained in paragraph 142 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 142.

143. The allegations contained in paragraph 143 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 143.

Panera specifically denies Plaintiffs are entitled to any relief requested in the WHEREFORE clause.

#### **COUNT VI –SURVIVAL ACTION**

144. Panera hereby reasserts and re-alleges its responses to paragraphs 1-143 above.

145. The allegations contained in paragraph 145 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 145.

146. The allegations contained in paragraph 146 of the First Amended Complaint set forth a legal conclusion to which no response is required. To the extent the allegations are not legal conclusions, Panera denies the allegations set forth in paragraph 146.

Panera specifically denies Plaintiffs are entitled to any relief requested in the WHEREFORE clause.

#### **PANERA'S DEFENSES AND AFFIRMATIVE DEFENSES**

By way of defenses and affirmative defenses, Panera asserts the following:

1. Plaintiffs' First Amended Complaint fails to state a cause of action against Panera for which relief can be granted and should be dismissed with prejudice.
2. Plaintiffs' claims are barred for failure to join necessary and/or indispensable parties.
3. Plaintiffs' claims are barred because they have not been injured or damaged by any act or omission of Panera.
4. If Plaintiffs were damaged, which Panera denies, the negligence/fault of one or more persons and/or entities for whose conduct Panera is not legally responsible reduces or completely bars Plaintiffs' alleged right to recover against Panera.
5. If Plaintiffs were damaged, which Panera denies, the negligence/fault of Plaintiffs or Sarah Katz constitutes the sole, intervening, and superseding cause of Plaintiffs' alleged damages.

6. If Plaintiffs were damaged, which Panera denies, the actions of one or more persons or entities for whose conduct Panera is not legally responsible constitute an intervening and superseding cause of Plaintiffs' alleged injuries and/or damages.

7. Plaintiffs' claims are barred, in whole or in part, by the provisions of the Pennsylvania Comparative Negligence Act.

8. The alleged defects of the Charged Lemonade products were not known and, in light of the existing, reasonably-available scientific and technological knowledge, could not have been known at the time.

9. If Plaintiffs recover from Panera, it is entitled to a contribution, set-off, and/or indemnification, either in whole or in part, from all persons or entities whose negligence/fault proximately caused or contributed to cause Plaintiffs' alleged damages.

10. Plaintiffs' damages are attributable to an independent, intervening cause.

11. Sarah Katz assumed the risk of her activities.

12. Sarah Katz was a sophisticated user of the product.

13. Sarah Katz's injuries and death were the result of a pre-existing medical condition.

14. Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, estoppel or unclean hands.

15. Plaintiffs' claims are barred or preempted by federal law and are subject to the primary jurisdiction of federal agencies and laws.

16. The Charged Lemonade product, if used by Sarah Katz, was misused such that the misuse was the proximate cause of the incident and Plaintiffs' alleged injuries and damages.

17. Plaintiffs failed to mitigate their damages, if any, in the manner required by Pennsylvania law. To the extent Plaintiffs failed to mitigate their damages and protect themselves from avoidable consequences, their damages should be so reduced.

18. Plaintiffs are not entitled to punitive damages because Plaintiffs' allegations are legally insufficient to support a claim for punitive damages.

19. Plaintiffs' punitive damages claim or prayer against Panera fails because Panera demonstrated reasonable care. An intent to injure, actual or constructive, is completely absent in this case. Panera did not act with a flagrant disregard for the safety of others, and therefore any award of punitive damages is barred.

20. Plaintiffs' punitive damages claim or prayer constitutes a violation of due process and other constitutional rights of Panera.

21. Plaintiffs' claim or prayer for punitive damages cannot be sustained to the degree it seeks to punish Panera for alleged harm to non-parties and/or to persons not before the Court. Imposition of punitive damages under such circumstances would violate Panera's procedural and substantive due process rights and equal protection rights under the Fifth and Fourteenth Amendments to the United States Constitution and Panera's due process and equal protection rights under cognate provisions of the State Constitution, and would be improper under the common law and public policies of the United States and Commonwealth of Pennsylvania and/or any other state whose law is deemed to apply in this case.

22. At all relevant time, Panera's conduct was privileged under the law.

23. Plaintiffs' claims for damages are speculative and uncertain and, therefore, not recoverable in this action.

24. Panera asserts as a defense any party's failure to preserve evidence and/or the spoliation of evidence, to the extent shown by further discovery.

25. Panera incorporates by reference all affirmative defenses provided in Pa. R.C.P. No. 1030(a) as if set forth fully herein.

26. Panera reserves the right to assert all other defenses and affirmative defenses that become known to it through the course of discovery in this matter by seeking leave to amend or by consent of the parties as permitted by the rules.

**DEMAND FOR JURY TRIAL**

Panera demands a trial by jury of all issues so triable.

Respectfully submitted,

**SHOOK, HARDY & BACON L.L.P.**

Dated: January 10, 2024

/s/ Marc P. Miles

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*Attorneys for Defendants Panera Bread Company  
and Panera, LLC*

**CERTIFICATE OF SERVICE**

I, Marc P. Miles, hereby certify that on the 10<sup>th</sup> day of January, 2024, I caused a true and correct copy of Defendants Panera Bread Company and Panera LLC's Answer to Plaintiffs' First Amended Complaint with Affirmative Defenses to be served via the Court's e-filing system upon all counsel of record.

/s/ Marc P. Miles

Marc P. Miles